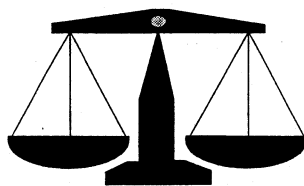


MO
JUD.Co 7:
2005



A SUMMARY OF SELECTED BILLS
TRULY AGREED TO AND FINALLY PASSED

By The
93rd General Assembly
First Regular Session



Prepared By
Office of State Courts Administrator
July 2005

MISSOURI STATE LIBRARY

JUL 26 2005

DOCUMENTS DIVISION

TABLE OF CONTENTS

	<u>Page</u>
Senate Bills and House Bills Listed by Bill Number	i
Introduction	1
Bill Summaries	2

SENATE BILLS

<u>Bill Number</u>	<u>Title</u>	<u>Page</u>
SB 10	CONTROLLED SUBSTANCES.....	2
SB 21	PUTATIVE FATHER REGISTRY	2
SB 24	LAW LIBRARY FUNDS	2
SB 37	DWI.....	2
SB 155	CHILD PROTECTION	3
SB 168	RESIDENTIAL PROPERTY DISPUTES	3
SB 210	COUNTY GOVERNMENT.....	4
SB 216	CRIME LABORATORY DEPOSITIONS.....	4
SB 289	GRAND JURIES	4
SB 320	MECHANICS' LIENS	4
SB 367	STATE EMPLOYEES/OVERTIME	4
SB 402	UNDERAGE DRINKING.....	4
SB 420	JUDICIAL PROCEDURES/JUDGES.....	5
SB 422	RECORDS EXPUNGEMENT	7
SB 423	DNA PROFILING.....	7

HOUSE BILLS

<u>Bill Number</u>	<u>Title</u>	<u>Page</u>
HB 58	POLITICAL SUBDIVISIONS/NEW JUDGES	7
HB 119	STATE EMPLOYEES' LIFE INSURANCE	7
HB 353	OMNIBUS CRIMINAL BILL	8
HB 365	SHERIFFS' REVOLVING FUND.....	10
HB 393	TORT REFORM.....	10
HB 445	VEHICLE REGULATIONS.....	12
HB 462	SUICIDE PREVENTION.....	12
HB 568	PROTECTION OF MINORS.....	13
HB 688	GENERAL ASSEMBLY/JUDICIAL PROCEDURES	13
HB 700	PROBATION AND PAROLE	13
HB 866	INSURANCE FRAUD	13
HB 972	DWI	13

INTRODUCTION

In their role of interpreting the statutes of Missouri, judges have a potential interest in almost any bill enacted. However, for this synopsis certain bills have been selected which appear to have a direct impact on the workload or procedures of the courts, or which appear likely to come to the attention of the courts within a short time. Some bills, which may provide for specific types of cases which are expected to be of low volume and therefore not of general interest, have not been included in this summary.

The individual summaries cover the major points of the bills or those sections that affect the courts, but they do not address every issue in each bill and should not be read as a substitute for reading the bill in the context of the entire chapter in the statutes.

Because of the disparate provisions in many of the bills, they have not been arranged by subject matter, but in numerical order. A table of contents is provided at the front of this document.

Bills become effective August 28, 2005, unless otherwise indicated. We have indicated the date signed on those bills with an emergency clause.

For a copy of any bill, please direct your request to:

Senate Bill Room
State Capitol
Jefferson City, Missouri 65101

House Post Office
State Capitol
Jefferson City, Missouri 65101

Staff of the Office of State Courts Administrator are willing to assist you in obtaining further information about any of the legislation.

SENATE BILLS

HCS SCS SB 10 & 27 CONTROLLED SUBSTANCES

Creates restrictions regarding the sale of products containing ephedrine and pseudoephedrine. Places ephedrine, its salts, optical isomers and salts of optical isomers, when it is the only active medicinal ingredient, on Schedule IV for controlled substances. This bill also places any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or ephedrine on Schedule V for controlled substances. However, products in a liquid or liquid-filled gel capsule form are excluded. Violations are a Class A misdemeanor. §195.017 and 195.417, RSMo

HCS SB 21 PUTATIVE FATHER REGISTRY

Makes various changes in adoption registry law, creates the Putative Father Registry Fund and provides that the fifty-dollar filing fee for an adoption petition shall be deposited in the fund. §191.975, 192.016, 453.020, and 453.121, RSMo

HCS SCS SB 24 LAW LIBRARY FUNDS

Places an expiration date of December 31, 2014 on the additional \$10 fee currently imposed on most court cases in Franklin County. §488.426, RSMo

HCS SS SCS SB 37, 322, 78, 351 & 424 DWI

This bill contains numerous DWI and other traffic-related provisions including:

- Removes the requirement that the judge be an attorney in certain traffic-related cases.
- Removes the restriction that a person applying for a limited driving privilege is barred from receiving a limited driving privilege if he or she has previously been granted the privilege within the immediate preceding five years.
- Prohibits any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property from knowingly allowing a minor to drink or knowingly failing to stop a minor from drinking on such property, unless the person is the minor's parent or guardian. A person who knowingly violates these new provisions is guilty of a Class A misdemeanor.
- Creates the crime of aggravated vehicular manslaughter. A person commits this crime if he or she while in an intoxicated condition, operates a motor vehicle in this state, and when so operating with criminal negligence:
 - (1) Causes the death of any person not a passenger in the vehicle operated by the defendant, or
 - (2) Causes the death of two or more persons, or
 - (3) Causes the death of any person while the defendant's blood alcohol is greater than or equal to .20 percent of alcohol by weight in the defendant's blood.

Committing the crime of aggravated vehicular manslaughter is a Class B felony.

- Provides that a person who operates a vehicle in violation of the statutes concerning involuntary manslaughter, assault in the second degree, driving while intoxicated, and driving with excessive blood alcohol content, while a child who is less than 17 years old is present, shall be guilty of endangering the welfare of a child in the second degree. Such offense is a Class A misdemeanor unless committed as part of a ritual or ceremony, in which case it is a Class D felony.
- Modifies the definition of a "persistent offender." Under the provisions of the act, a "persistent offender" is a person convicted of two or more intoxication-related traffic offenses. Under the current law, the prior offenses must have occurred within 10 years of the offense for which the person is being charged.
- Defines an "aggravated offender" as a person who has pleaded to or been found guilty of:
 - (1) Three or more intoxication-related traffic offenses; or
 - (2) One intoxicated-related traffic offense and certain enumerated crimes (involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree, or assault of a law enforcement officer).
- Defines a "chronic offender" as a person who has pleaded guilty to or has been found guilty of:
 - (1) Four or more intoxication-related traffic offenses;
 - (2) On two or more of separate occasions certain enumerated crimes (e.g. involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree); or
 - (3) Two or more intoxicated-related traffic offenses plus has been found guilty of certain enumerated crimes (e.g. involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree).
- Provides that any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proved to be an aggravated offender shall be guilty of a Class C felony. Aggravated offenders shall not be eligible for parole or probation until they serve a minimum of 60 days imprisonment.
- Provides that any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proved to be a chronic offender shall be guilty of a Class B felony. Chronic offenders shall not be eligible for parole or probation until they serve a minimum of two years imprisonment. §302.060, 302.321, 302.541, 311.310, 565.024, 568.050, 577.001, 577.023, and 577.500, RSMo

HCS SCS SS#2 SB 155 CHILD PROTECTION

This bill provides for the expungement of certain child abuse reports by the Division of Family Services. It also provides that, in certain instances, if the juvenile court determines that a minor has abused another child, such minor shall be prohibited from returning to or residing in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends, until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings. §210.117, 210.152, 210.710, 210.720 and 211.038, RSMo

HCS SS SCS SB 168 RESIDENTIAL PROPERTY DISPUTES

This bill permits contractors to repair construction defects prior to the commencement of litigation. Contractors must provide notice in contracts with homeowners for the sale, construction, or substantial remodel of a residence. The notice sets out required procedures for resolving disputes with contractors. Additionally, the contractor must provide the homeowner with a flowchart describing the various time frame guidelines processes required by this bill. Chapters 213 and 431, RSMo

CCS HCS SS SCS SB 210 COUNTY GOVERNMENT

This bill contains numerous provisions relating to county government. The provisions relating to the judiciary are: allows a court administrator, as well as the circuit court clerk, to schedule salary commission meetings and serve as the temporary chairman until the members elect a chairman; provides that a clerk of a state court, who takes or processes applications for passports or their renewal, shall account for the fees charged for such service and for the expenditure of such fee in an annual report made to the presiding judge and the office of the state courts administrator. Such fees shall be only for the maintenance of the courthouse or to fund operations of the circuit court.

The bill also provides that the additional \$10 fee for Franklin County for the law library fund in Section 488.426, RSMo will expire on December 31, 2014 and, specifies that, when a change of venue is granted in a criminal case, the defendant will be housed in the county in which the cause is removed if the respective sheriffs do not agree. §50.333, 483.537, 488.426, 488.429, and 545.550

HCS SB 216 CRIME LABORATORY DEPOSITIONS

Provides that, unless otherwise ordered by the court, depositions of employees of publicly funded crime laboratories are to take place in the county where the employee is employed. Chapter 492, RSMo

SCS SB 289 GRAND JURIES

Allows prosecutors to have discretion as whether a grand jury will examine public buildings and report on their condition, instead of mandating such examination. §540.031, RSMo

HCS SB 320 MECHANICS' LIENS

Creates a lien against real estate for the non-payment of rental equipment fees. The bill includes a statute of limitations which begins to run upon the date the equipment is removed from the renter's property and expires sixty days from said date. Provisions of the act set out certain situations in which a lien involving rental equipment will not exist. §429.010 and 429.080, RSMo

SB 367 STATE EMPLOYEES/OVERTIME

Changes the requirement for payment of overtime hours for nonexempt state employees from within the calendar quarter to within the calendar month following the request for payment.

Also provides that state employees, members of the General Assembly, elected officials, and members of the judicial branch who fail to pay their state income taxes shall provide a payment plan in the form of a payroll deduction. If the employee terminates the payroll deduction without agreement of his or her supervisor or Director of Revenue, the person shall either be terminated from his job or reported to the appropriate ethics committee for disciplinary action. §105.262 and 105.935, RSMo

HCS SB 402 UNDERAGE DRINKING

This bill would require each school district to implement a policy by June 30, 2006, that details the consequences for students who consume intoxicating beverages on or off school property.

The legislation would also impose new criminal penalties for minors who are determined to be intoxicated or in possession of a controlled substance, and require the court to order the suspension of the driver's license for such defendants. At present, only juveniles who are found to be in possession of intoxicating beverages can be charged with a violation of the statute. This legislation would change that to include anyone "...or who is visibly intoxicated as defined in section 577.001, RSMo, or has a detectable blood alcohol content of more than two-hundredths of one percent or more..." to be charged with a violation.

The bill would also require a juvenile court to notify Revenue that an underage drinker is not eligible to receive a driver's license until he or she is 16 1/2 years old, and would also impose criminal penalties for owners or renters who permit underage drinking on their property (except for parents or guardians), and for persons who produce a false ID for persons under 21.

After a period of one year or reaching 21, a person who has been found guilty of violating Section 311.325 for the first time and who has not been convicted of another alcohol-related offense since may apply to have the court expunge his or her record. If the court finds no other alcohol-related offenses, the court shall enter an order of expungement. A person can receive only one expungement under this section. §311.310, 311.325, 570.223, and 577.500, RSMo

CCS/HCS/SCS/SBs 420 & 344 JUDICIAL PROCEDURES/JUDGES

PRIVATE CHILDREN SERVICES LIABILITY - 210.116 - A private contractor with the children's division that provides services to children and their families will receive the same immunity from civil liability as the division. The immunity will not apply to a private contractor if the contractor knowingly violates policies or rules of the division or any state law relating to child abuse.

CHILD PROTECTION - 210.117, 211.038 and 211.181 - This act prohibits a child, who has been taken into the custody of the state or the jurisdiction of a juvenile court, from being reunited with a parent or being placed back in the home in which the parent or any person living in the home has been found guilty or plead guilty to certain sexual offenses or offenses against the family when a child was the victim. The Child Support Division may exercise discretion in the placement of a child in a home with a parent when the parent or person living in the home has been found guilty or plead guilty for similar offenses in another state. A juvenile court cannot place a juvenile sex offender in a home within 1000 feet of the victim until the victim reaches 18 years of age. The act prohibits a minor from residing within a certain distance of a child abused by the minor.

SAFE PLACE FOR NEWBORNS - 210.950 - Extends the affirmative defense to prosecution for voluntary relinquishment of a child no more than one year old. Currently, the child must be between six and thirty days old.

ALTERNATIVE SENTENCING - 217.860 - Establishes the Task Force on Alternative Sentencing within the Department of Corrections and provides that the primary duty of the task force is to develop a statewide plan for alternative sentencing programs.

CHILD SUPPORT - 452.340 - Authorizes a court to enter a judgment abating child support one time for a period of up to five months for any semester in which a child completes at least six but less than 12 credit hours when a child has pursued a path of continuous attendance at an institution of higher learning and has demonstrated evidence of a plan to continue the attendance. Further, the act changes the review of the child support guidelines from every three years to every four years.

ORDERS OF PROTECTION - 455.516 and 455.524 - Provides that child orders of protection may be issued for at least 180 days and up to one year. Further, the court shall retain jurisdiction over a full order of protection for a child for the duration of the order. The bill allows the court to schedule compliance review hearings to monitor compliance with the order.

NONPROBATE TRANSFERS - 461.005 - This act states that the term "owner" when used to define a person having a right to create a beneficiary deed, shall include any such person regardless of the terminology used to refer to the owner in the deed. This act will apply to all beneficiary deeds, including those executed prior to August 28, 2005.

PROBATE JUDGES - 472.060 and 478.255 - Applies current replacement procedures to disqualified probate judges.

JUDICIAL CIRCUITS - 478.550, 478.570 and 478.600 - Increases the number of circuit judges in the 11th and 23rd judicial circuits from 4 to 6 beginning January 1, 2007. The family court and drug court commissioner positions in those circuits shall become associate circuit judge positions beginning on January 1, 2007. Further, there will be one additional associate circuit judge in Cass County beginning January 1, 2007

PASSPORT FEES - 483.537 - Requires clerks who process passport applications and collect a fee for the processing to account for the expenditure of the fee in an annual report to the presiding judge and the Office of State Courts Administrator. The fees may only be used for the maintenance of the courthouse or to fund operations of the circuit court.

COURT COSTS - Various sections in chapter 488 - No court in this state that is authorized to collect court costs is required to refund any overpayment of less than \$5 or collect any due court costs of less than \$5. The circuit court may retain any overpayment for operation of the circuit court. The act removes an effective date for a municipality or county to enact an ordinance to impose a domestic violence shelter surcharge on marriage licenses and civil cases filed in circuit court. Currently, such ordinance had to be in effect prior to January 1, 2001. For any county or city with a domestic violence shelter or whose residents are in a shelter located in another county, the domestic violence shelter surcharge may be assessed in any criminal case, including violations of any county or municipal ordinance. The act authorizes a circuit court to contract with a private entity operated under a contract with a state agency or the Office of State Courts Administrator.

JURY DUTY - 494.430 and 494.432 - Health care providers and employees of religious institutions may be excused from jury duty upon timely application to the court. Courts must specify the date a prospective juror will appear for jury service before granting a postponement.

UNLAWFUL DETAINER ACTIONS - 534.090 - The service of summons in an unlawful detainer action will be delivered by ordinary, rather than certified, mail. If the officer assigned to execute the summons returns to the court with information that the defendant cannot be found and with proof by affidavit that the summons was mailed, the judge will proceed to hear the matter as if personal service had been made.

REMOVAL OF DEFENDANTS - 545.550 - Sheriffs are authorized to agree as to which county will house a defendant after a change of venue.

CIVIL ACTION FOR PASSING BAD CHECKS - 570.123 - Currently, any person bringing a civil action against a person who passes a bad check may be entitled to attorney fees. This act provides that such person may be liable for "reasonable" attorney fees.

PERSONAL INFORMATION ON THE INTERNET - Section 1 - The act prohibits a court or a state or local agency from releasing personal information of certain elected and appointed officials on the Internet. It shall be a class C misdemeanor if any person knowingly posts personal information on such officials on the internet.

29th JUDICIAL CIRCUIT - Section 3 - The act creates a state-funded family court commissioner position in the 29th judicial circuit.

42nd JUDICIAL CIRCUIT - Section 4 - The act creates a state-funded drug court commissioner position in the 42nd judicial circuit.

23rd JUDICIAL CIRCUIT - Section 5 - Any drug court commissioner appointed in the 23rd judicial circuit will be a state-funded position.

HCS SB 422 RECORDS EXPUNGEMENT

Provides that when a court enters an order of expungement for arrest records or alcohol-related driving offenses, the expunged records shall be confidential and only available to the parties or by court order for good cause. §610.123, RSMo, and section 577.054

HCS SCS SB 423 DNA PROFILING

This bill makes changes in the procedures for DNA collection. It also exempts traffic violations cases from the \$15 criminal case surcharge used to fund the DNA profiling analysis of convicted felons. §488.5050, 650.050, 650.052, and 650.055, RSMo

HOUSE BILLS

CCS SS SCS HCS HB 58 POLITICAL SUBDIVISIONS/NEW JUDGES

This bill contains numerous provisions relating to political subdivisions and county government including: authorizes the county commissions in Jasper and Jefferson counties to impose by rule, regulation, or ordinance a civil fine of up to \$1,000 for each violation of any rule, regulation, or ordinance adopted by the commission; specifies that when the recorder of deeds is separate from the circuit clerk in counties of the second, third, or fourth classification, the recorder must be paid the statutory compensation; excludes from qualification as a candidate for public office any person who has been convicted of or pled guilty to a felony or misdemeanor under federal law; and, authorizes municipal courts to contract with a public entity or employ a person to serve as the city's probation officer.

The bill also increases the number of circuit judges in the 11th judicial circuit from 4 to 6 beginning January 1, 2007. The family court and drug court commissioner positions shall become associate circuit judge positions beginning on January 1, 2007. Further, there will be one additional associate circuit judge in Cass County beginning January 1, 2006.

The bill authorizes Springfield to collect additional court costs of up to \$5 for municipal ordinance violations and, authorizes municipal courts to contract with a public entity or employ a person to serve as the city's probation officer. §44.090, 49.093, 49.272, 50.343, 50.530, 50.760, 50.770, 50.780, 50.1030, 52.317, 54.010, 54.280, 54.320, 54.330, 55.160, 59.005, 64.215, 64.940, 65.030, 65.110, 65.150, 65.160, 65.180, 65.190, 65.200, 65.220, 65.230, 65.300, 65.460, 65.490, 65.600, 65.610, 67.459, 67.469, 67.1003, 67.1062, 67.1067, 67.1069, 67.1070, 67.1350, 67.1401, 67.1451, 67.1754, 67.1775, 67.1850, 71.012, 71.794, 82.291, 82.1025, 94.270, 94.700, 100.050, 100.059, 105.711, 115.013, 115.019, 135.010, 136.010, 136.160, 137.073, 137.078, 137.100, 137.106, 137.115, 137.465, 137.585, 137.720, 138.100, 139.040, 139.055, 139.120, 139.350, 139.400, 139.420, 139.430, 139.440, 139.450, 139.460, 140.150, 165.071, 190.010, 190.015, 190.090, 190.292, 190.335, 205.010, 210.860, 210.861, 217.905, 231.230, 231.444, 233.295, 242.560, 245.205, 246.005, 247.060, 247.180, 249.1150, 249.1152, 249.1154, 250.140, 263.245, 278.240, 301.025, 313.800, 313.820, 320.121, 321.120, 321.190, 321.220, 321.322, 321.603, 349.045, 393.015, 447.620, 447.622, 447.625, 447.640, 473.770, 473.771, 478.570, 478.600, 488.2220, 559.607, 537.600, 640.635, 644.076, 701.038, and 701.053, RSMo

HCS HB 119 STATE EMPLOYEES' LIFE INSURANCE

Allows state employees and retirees who are called to military service in times of active armed warfare to retain life insurance benefits for the entire duration of deployment, subject to the terms and conditions of any life insurance policy in place. Employees or retirees who retain this insurance while deployed must pay for the cost of coverage. The bill contains an emergency clause. Chapter 105, RSMo Signed on 7/13/05.

CCS SS SCS HCS HB 353 OMNIBUS CRIMINAL BILL

This bill changes the laws regarding crime prevention. In its main provisions, the bill:

- (1) Removes a provision requiring defendants to be sentenced according to the law in place at the time of sentencing, rather than the law as it existed at the time of the crime, whenever the change in law reduced the penalty for the offense (Section 1.160, RSMo);
- (2) Authorizes Missouri Capitol Police officers to investigate and arrest a person anywhere in Cole County when there is probable cause to believe the person committed a crime within their jurisdiction (Section 8.177);
- (3) Creates the Governor's Security Division within the State Highway Patrol. The division will provide transportation, security, and protection for the Governor, the Governor's family, and, at the discretion of the Superintendent of the State Highway Patrol, other public officials (Sections 43.300 - 43.330);
- (4) Allows local law enforcement agencies to perform a criminal record review of open records through the Missouri Uniform Law Enforcement System (MULES) on persons applying for city or county employment (Sections 43.535 and 43.543);
- (5) Allows cities and counties to enact ordinances requiring fingerprints of job applicants or licensees in certain occupations for the purpose of conducting a criminal record review (Section 43.543);
- (6) Prohibits any person convicted of a federal crime from qualifying as a candidate for an elective public office (Section 115.348);
- (7) Adds salvia divinorum and 12 other compounds to the list of controlled substances and clarifies which forms of anabolic steroids are included within schedule II controlled substances (Section 195.017);
- (8) Gives the juvenile court concurrent jurisdiction with the circuit court in cases involving children younger than 17 years of age who violate state or municipal ordinances prohibiting the possession or use of tobacco products (Section 211.031);
- (9) Requires lifetime supervision by the Board of Probation and Parole for any person convicted of certain sex offenses when the victim is younger than 14 years of age and the offender is sentenced as a prior sex offender. These offenders must be electronically monitored using a global positioning system (Sections 217.735 and 559.106);
- (10) Adds failure to register as a sex offender to the list of violations for which the board provides supervision services (Section 217.750);
- (11) Removes a requirement that the municipal judge must be an attorney for any conviction for an intoxication-related offense in that municipal court to be considered for the purposes of sentence enhancement in any subsequent conviction (Sections 302.321 and 302.541);
- (12) Increases the penalty from a class C to a class B misdemeanor for failure to yield to an emergency vehicle; (Section 304.022);
- (13) Adds chemical urine tests to the list of tests that may be conducted by the State Water Patrol to measure the blood-alcohol content of a person operating a watercraft, increases from \$200 to \$500 the damage amount that requires the filing of an accident report when there is damage to a watercraft, and prohibits the use of any device that, when activated, allows a watercraft's muffler to exceed the maximum decibel levels allowed by law (Sections 306.112 - 306.147);
- (14) Removes the requirement that photographs taken pursuant to a search warrant must be filed with the court clerk after the search is conducted (Section 542.276);
- (15) Allows law enforcement agencies to hold a suspect arrested without a warrant for up to 24 hours before charging the person with a crime. Currently, suspects may be held for 24 hours when arrested for a class A felony and 20 hours for lesser offenses (Section 544.170);
- (16) Removes the provision allowing first-time offenders convicted of a class C or class D nonviolent felony to petition the court for early release after serving at least 120 days (Section 558.016);

- (17) Removes a provision allowing the board to convert an offender's consecutive prison sentences into concurrent sentences (Section 558.019);
- (18) Allows the court to add up to one year onto a person's probationary period when the person has violated the terms of his or her probation (Section 559.016);
- (19) Allows a prosecutor to file a motion seeking the revocation of a person's probation and allows the court to temporarily suspend a person's probationary period when issuing an arrest warrant for the person (Section 559.036);
- (20) Creates the crime of sexual contact with a student, a class D felony. The crime is committed when a teacher has sexual contact with a student on school property (Section 566.086);
- (21) Removes financial conflict of interest restrictions on sex offender counseling program providers when there is only one qualified service provider within a reasonably accessible distance from the offender (Section 566.140);
- (22) Expands the crime of endangering the welfare of a child in the first degree, a class C felony. Currently, a person commits the offense if he or she produces or sells methamphetamine in the presence of a child younger than 17 years of age. The crime is expanded to include producing, selling, or attempting to produce the drug within the residence of the child (Section 568.045);
- (23) Expands the crime of endangering the welfare of a child in the second degree, a class A misdemeanor. The offense is committed when a person operating a motor vehicle commits involuntary manslaughter, assault in the second degree, driving while intoxicated, or driving with excessive blood-alcohol content while a child younger than 17 years of age is in the vehicle; (Section 568.050);
- (24) Expands the crime of arson in the first degree to include damage to a structure by fire or explosion resulting from an attempt to produce methamphetamine (Section 569.040);
- (25) Changes the crime of illegal copying and distribution of sound recordings by lowering the threshold for a felony from 1,000 illegal copies to 100 illegal copies (Section 570.255);
- (26) Expands the crime of theft of cable television service to include when a person knowingly attempts to tamper with any cable television equipment which results in the disruption or unauthorized use of a cable television system (Section 570.300);
- (27) Creates the crime of tampering with electronic monitoring equipment, a class C felony. The crime is committed when a person intentionally removes or tampers with an electronic monitoring device which is required to be worn by a criminal offender, pursuant to a court order or as required by the Board of Probation and Parole (Section 575.205);
- (28) Creates the crime of violating a condition of lifetime supervision, a class C felony. The crime is committed when person knowingly violates a condition of lifetime supervision by the board for any person convicted of certain sexual offenses. (Section 575.206);
- (29) Clarifies that the crime of witness tampering does not require that the prospective witness does need to be testifying in an official proceeding in order for the crime to occur (Section 575.270);
- (30) Expands the crime of misuse of official information to include the reckless disclosing of information from the MULES or the National Crime Information Center System for personal or private use (Section 576.050);
- (31) Creates the crimes of possessing and distributing a prescription medication school property without a valid prescription. Possession is a class C misdemeanor, and distribution is a class B misdemeanor (Sections 577.625 and 577.628);
- (32) Creates the crimes of possessing and distributing a prescription medication on school property without a valid prescription. Possession is a class C misdemeanor, and distribution is a class B misdemeanor (Sections 577.625 and 577.628);
- (33) Makes it a class A misdemeanor to operate a video camera within a motion picture theater without the consent of the theater owner. A second or subsequent offense is a class D felony. The owner of the movie theater is exempt from civil liability for detaining a person suspected of the offense, as long as the detention is reasonable (Section 578.500); and

- (34) Allows the Director of the Department of Public Safety to establish a state firearms training and qualification standard for retired law enforcement officers to comply with the federal Law Enforcement Officers Safety Act (Section 650.030)

The bill also changes the laws regarding the crimes of stealing, tampering, and receiving stolen property. The bill:

- (1) Allows the court to order restitution be paid to the victim of tampering or auto theft, including the victim's insurance deductible payment, towing and storage fees, and any reasonable expenses incurred by the victim in prosecuting the offense (Section 559.105);
- (2) Prohibits the court or the Board of Probation and Parole from releasing a person early from probation or parole if the person has failed to pay restitution (Section 559.105);
- (3) Makes evidence of prior acts of tampering admissible to prove the requisite knowledge or belief in a current tampering case (Section 569.080);
- (4) Makes tampering in the second degree a class C felony when the person has a prior conviction for tampering in the first or second degree, auto theft, or receiving stolen property (Section 569.090);
- (5) Expands the crime of stealing to include obtaining control over property or services under circumstances that a reasonable person would know it was stolen and clarifies that the crime occurs when undercover police are posing as the sellers of stolen property (Section 570.030); and
- (6) Makes auto theft a class B felony when the person has two prior convictions for stealing-related offenses (Section 570.040).

Certain sections of the bill contain an emergency clause. Signed on 7/13/05.

Copyright (c) Missouri House of Representatives used by permission

HCS HB 365 SHERIFFS' REVOLVING FUND

Removes the provision in Section 50.535, RSMo which requires all moneys in a county sheriff's revolving fund to be used only for the purchase of equipment and to provide training for law enforcement officers, and allows county sheriffs to use moneys in the fund to cover the costs associated with the processing of concealed carry endorsements. §50.535, RSMo

CCS SS SCS HCS HB 393 TORT REFORM

This bill changes the laws regarding claims for damages and their payment. In its main provisions, the bill:

- (1) Establishes venue in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in all tort actions in which the plaintiff was first injured in Missouri;
- (2) Establishes venue in all tort actions in which the plaintiff was first injured outside Missouri:
 - (a) For corporate defendants, in any county where the registered agent is located or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured; and
 - (b) For individual defendants, in any county of the defendant's principal place of residence in Missouri or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured;
- (3) Specifies that in wrongful death actions the plaintiff is considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action;
- (4) Specifies that in a spouse's claim for loss of consortium the plaintiff claiming consortium is considered first injured where the other spouse was first injured by the wrongful act or negligent conduct alleged in the action;

- (5) Specifies that the court must transfer venue to the county unanimously chosen by the parties if all parties agree in writing to a change of venue. If parties are added after the date of the transfer and they do not consent to the transfer, the cause of action will be transferred to a county in which venue is otherwise appropriate;
- (6) Requires prejudgment interest to be calculated 90 days after the demand or offer is received by certified mail, return receipt requested. The demand or offer must be in writing and be accompanied by an affidavit from the claimant describing the nature of the claim and the damages claimed. For wrongful death, personal injury, and bodily injury claims, the demand letter must also list the medical providers of the claimant, include copies of all reasonably available medical bills, other medical information, and authorization to allow the other party to obtain employment and medical records. The demand must be left open for 90 days;
- (7) Specifies that claims for prejudgment and post-judgment interest in tort actions are calculated at an interest rate that is equal to the intended Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest;
- (8) Allows parties to introduce evidence of the value of medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party. There is a rebuttable presumption that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the treatment rendered. The court can determine, outside the hearing of the jury, the value of medical treatment rendered based on additional evidence;
- (9) Defines "punitive damage award" to include an award for punitive or exemplary damages as well as an award for aggravating circumstances;
- (10) Allows discovery of a defendant's assets only after the trial court finds that the plaintiff will have a submissible case for punitive damages;
- (11) Limits an award for punitive damages to the greater of \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. The limits on punitive damages do not apply to certain causes of action relating to housing discrimination;
- (12) Allows joint and several liability if a defendant is found to be 51% or more at fault. The defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51% at fault, the defendant is only responsible for the percentage of the judgment he or she is determined to be responsible for by the trier of fact. A party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant if the other defendant was an employee of the party or if the party's liability for the fault of another arises out of the duty created by the Federal Employers' Liability Act. Defendants are only severally liable for the percentage of punitive damages that are attributed to the defendant by the trier of fact. In all tort actions, parties are prohibited from disclosing to the trier of fact the impact of the provisions relating to joint and several liability;
- (13) Includes long-term care facilities licensed under Chapter 198, RSMo, in the definition of "health care provider." Exemplary damages and damages for aggravating circumstances are included in the definition of "punitive damages";
- (14) Specifies that the cap on non-economic damages for all plaintiffs is \$350,000, irrespective of the number of defendants. There is no inflation adjustment on the non-economic damages cap;
- (15) Requires future medical payments to be made in an amount according to a schedule determined by the payee's life expectancy. The court must apply interest on future payments at an interest rate equal to the average auction price of a 52-week United States Treasury bill. The parties are not prohibited from agreeing to settle and resolve the claim for future damages; and if an agreement is reached, the future payment schedule does not apply;
- (16) Requires a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care that caused the plaintiff's damages. Currently, the court gives discretion as to whether or not to dismiss a claim under these circumstances;
- (17) Allows a defendant to file a motion 180 days after the filing of the petition asking the court to examine the opinion of the health care provider. If the opinion fails to meet the requirements specified in the bill, the court must conduct a hearing within 30 days to determine whether there is probable cause to believe that one or more qualified and competent health care providers will testify that the plaintiff was injured because of the medical negligence of the defendant. If the court finds no probable cause, the court can dismiss the petition and hold the plaintiff responsible for the defendant's reasonable attorney fees and costs;

- (18) Specifies that physicians who provide medical treatment to patients in city, county, or nonprofit health clinics that provide free health care service are not liable for civil damages for acts or omissions, unless the damages were caused by gross negligence or by willful or wanton acts or omissions of the physician;
- (19) Prohibits statements, writings, or benevolent gestures expressing sympathy made to the person or the family from being admitted into evidence;
- (20) Specifies, for purposes of determining venue, that in any action against a health care provider for damages for personal injury or death arising out of the rendering of or failure to render health care services, the plaintiff will be considered injured by the health care provider only in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case;
- (21) Limits the amount of a supersedeas bond to \$50 million in all cases in which there is a count alleging a tort;
- (22) Authorizes the appointment of a peer review committee by the board of trustees or chief executive officer of a long-term care facility licensed under Chapter 198;
- (23) Specifies that the disclosure of interviews, memoranda, proceedings, findings, or deliberations of a peer review committee does not waive or have an effect on the confidentiality, nondiscoverability, or nonadmissibility of the documents;
- (24) Specifies that the judge will transfer the case to a proper forum if a plaintiff or defendant is added or removed prior to trial which would alter the determination of venue if originally added or removed;
- (25) Specifies that for purposes of determining damages, if the deceased was not employed full-time and was at least 50% responsible for the care of one or more minors, disabled persons, or persons over the age of 65, there is a rebuttable presumption that the value of the care provided is equal to 110% of the state average weekly wage;
- (26) Specifies that actions against physicians and other health care providers for malpractice must be brought within two years of a minor's eighteenth birthday. Currently, the statute of limitations is 10 years from the minor's twentieth birthday; and
- (27) Specifies that the provisions of the bill, except for Section 512.099, apply to all causes of action filed after August 28, 2005.

Sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 510.340, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and 538.300, RSMo

Copyright (c) Missouri House of Representatives, used by permission.

HB 445 VEHICLE REGULATIONS

Allows municipalities to adopt by reference any state statute relating to vehicle equipment regulations contained in Chapter 307, RSMo. §71.943, RSMo

HCS HB 462 & 463 SUICIDE PREVENTION

This bill changes the laws regarding suicide prevention. As it relates to the judiciary, the bill adds suicide prevention intervention rendered in good faith at the scene of a threatened suicide by a mental health professional, a health care provider, or another person who has been trained to provide suicide prevention interventions to the list of care or services rendered in an emergency situation that are immune from civil liability. §537.037 and 630.140, RSMo

CCS SS HCS#2 HB 568 PROTECTION OF MINORS

This bill contains numerous provisions relating to the protection of children including: clarifies the provision prohibiting a child under the care of the state or the jurisdiction of a juvenile court from being reunited with a parent or being placed back in the home with a parent who has been found guilty or plead guilty to specific crimes of sexual offenses or offenses against the family when a child was the victim; clarifies the provision allowing the Children's Division in the Department of Social Services to exercise discretion in awarding custody or visitation or the placing of a child back in the home of a parent, or any person residing in the home, who has been found guilty or plead guilty to any other offense; removes when a parent has had "full orders of protection entered against them" from the list of conditions preventing a child from being returned to a parent; clarifies the provision prohibiting a court from awarding custody or unsupervised visitation to a parent when that parent has been found guilty or plead guilty to specific crimes of sexual offenses or offenses against the family when a child was the victim; clarifies the provision prohibiting a court from granting visitation rights to the noncustodial parent if that parent or any person residing with the parent has been found guilty or plead guilty to specific crimes of sexual offenses or offenses against the family when a child was the victim; clarifies the provision prohibiting a court from modifying an order granting or denying visitation rights if a parent or any person residing with the parent has been found guilty or plead guilty to specific crimes of sexual offenses or offenses against the family when a child was the victim; and, allows a court to appoint a guardian ad litem in any proceeding alleging child abuse or neglect. §210.110, 210.112, 210.117, 211.037, 211.038, 452.375, 452.400, and 452.490, RSMo

SCS HB 688 GENERAL ASSEMBLY/JUDICIAL PROCEDURES

This bill requires that, from January 1 to June 1 of each year, there will be an automatic stay of all administrative and court proceedings in which a member of the General Assembly has filed written notice with the court or administrative hearing officer and all parties that the member is an attorney for a party, is a necessary witness, or is a party to an action. The stay also applies to orders requiring the member to serve as a juror whenever the General Assembly is in session. Exemptions are provided in the bill. §510.120, RSMo

HB 700 PROBATION AND PAROLE

Authorizes the Board of Probation and Parole to charge offenders placed under the supervision of the board a fee of up to \$60 a month. All fees will be deposited into the Inmate Fund within the state treasury and may be used for community corrections and intervention services for offenders. §217.690 and 565.092, RSMo

HCS HB 866 INSURANCE FRAUD

Specifies that it is illegal for any person to engage in a fraudulent scheme, make a false statement, or conceal a material fact relating to an insurance transaction. The person may be fined not more than \$100,000 or be imprisoned for not more than 10 years, or both. Restitution may be ordered. §375.146 and 375.991, RSMo

SS#2 SCS SCS HB 972 DWI

This legislation will enhance the penalties for "chronic" and "aggravated" drunk offenders (as defined in the bill) and create the crime of "aggravated vehicular manslaughter."

The legislation will also provide that courts may not grant suspended imposition of sentences for certain chronic/aggravated offenders; establish penalties for allowing minors to possess alcohol or drugs on real property; increase the penalty for involuntary manslaughter when certain conditions are met (alcohol, leaving a highway), and redefine the crime of endangering the welfare of a child to include driving while intoxicated.

The legislation will also regulate sexually oriented businesses and create several new related crimes. §311.310, 565.024, 566.083, 568.050, 577.001, and 577.023, RSMo